

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	Chapter 11
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,)	Case No. 18-23538 (RDD)
)	(Jointly Administered)
Debtors. ¹)	

**STIPULATION AND ORDER CONCERNING (I) ADJOURNING
PENDING DEADLINES FOR MOTION TO ENFORCE AND
ADVERSARY COMPLAINT AND (II) SETTING BRIEFING SCHEDULE**

This Stipulation and Order (the “Stipulation”) is made as of June 3, 2019, by and between Sears Holdings Corporation (“SHC” or “Sears”) and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) and Transform Holdco LLC (“Transform” or “Buyer” and together with the Debtors, the “Parties”), through their respective and duly authorized counsel of record.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovol Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

RECITALS

WHEREAS on October 15, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, on January 17, 2019, Transform entered into an Asset Purchase Agreement (as may be amended, restated, supplemented or modified from time to time, the “APA”) with Sears and its subsidiaries party thereto (together with Sears, the “Sellers”);

WHEREAS on February 8, 2019, the *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith, and (IV) Granting Related Relief* (the “Sale Order”) (ECF No. 2507) was entered by the Bankruptcy Court, approving the sale of certain assets of the Sellers to the Buyer;

WHEREAS on May 24, 2019, the Debtors filed their *Supplemental Motion to Enforce the Asset Purchase Agreement* (the “Motion to Enforce”) (ECF No. 4029), with a proposed objection date and time of May 31, 2019 at 4:00 p.m., and a proposed hearing date and time of June 20, 2019 at 10:00 a.m. (the “Proposed Deadlines”);

WHEREAS a few hours after Debtors filed the Motion to Enforce, Transform filed an Adversary Complaint (ECF No. 4033) (Adversary Proceeding No. 19-08262) (the “Adversary Complaint”) against the Sellers that are currently the Debtors in this Chapter 11 proceeding (the “Defendants”); and

WHEREAS the Parties have agreed to adjourn the pending deadlines for the Motion to Enforce and Adversary Complaint, and set a single briefing schedule applicable to both the Motion to Enforce and Adversary Complaint (the "Briefing Schedule");

NOW THEREFORE, based upon the foregoing recitals, which are incorporated as though fully set forth herein, it is hereby Stipulated and Agreed, and upon Court approval it shall be ordered, as follows:

1. The Motion to Enforce is deemed to be an answer to the Adversary Complaint. All allegations in the Adversary Complaint not specifically identified in the Motion to Enforce are deemed to be denied. The Parties waive their rights for an initial hearing related to the Adversary Complaint, and the Proposed Deadlines are adjourned.
2. All discovery related to the Motion to Enforce and Adversary Complaint shall be completed by Friday, June 21, 2019 (the "Discovery Cutoff Date").
3. Transform will file a brief (i) in opposition to the Motion to Enforce and (ii) in support of the relief requested in the Adversary Complaint along with any written direct examinations of its witnesses by declaration by no later than Wednesday, June 26, 2019 at 4:00 p.m.
4. The Debtors will file a single brief (i) in further support of the Motion to Enforce and (ii) in opposition to the relief requested in the Adversary Complaint along with any written direct examinations of their witnesses by declaration by no later than Wednesday, July 3, 2019 at 4:00 p.m.
5. Transform will file a reply brief in further support of the relief requested in the Adversary Complaint by no later than Tuesday, July 9, 2019 at 4:00 p.m.

6. A hearing shall commence at 10:00 a.m. on Thursday, July 11, 2019 or such other date and time as shall be set by the Bankruptcy Court (the “Hearing Date”). The hearing will be held to resolve all requests for relief in the Motion to Enforce and in the Adversary Complaint and the Parties waive any procedural basis to object to the relief granted by the Court.

7. The Parties will meet and confer on stipulated facts and agree on the admissibility of as many exhibits as possible and submit such exhibits to Chambers in a joint exhibit book in advance of the Hearing Date. Any motions *in limine* with respect to proposed evidence whose exclusion will materially affect the conduct of the trial shall be filed two days in advance of the Hearing Date.

8. The above schedule may be modified only pursuant to an agreement of the Parties (which may be confirmed by email) or by the Bankruptcy Court for good cause shown.

9. This Stipulation may be executed in one or more counterparts, including facsimile or electronic counterparts, all of which together shall constitute one and the same instrument.

10. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation.

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of the date first above written.

Dated: New York, New York
June 3, 2019

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SO ORDERED:

/s/Robert D. Drain
Hon. Robert D. Drain
United States Bankruptcy Judge

Dated: White Plains, New York
June 18, 2019